(1) Supreme Court, U.S.
FILED
001026 NOV 20
No. _____
OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

♦

HARRY W. VINSON
Petitioner

v.

REGGIE COLLUMS, ET AL

Respondents

♦

On Petition For Writ Of Certiorari To The
United States Court of Appeals For
The Fifth Circuit

♦

PETITION FOR WRIT OF CERTIORARI

♦

Harry W. Vinson
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in propria persona

15 pp

QUESTION PRESENTED

Can the Federal District Court or The Court of Appelas reduce the time for filing appeals as allowed by the Federal Rules of Civil Procedure.

OTHER PARTIES TO PROCEEDING

Other parties to the proceeding not listed on cover are; United States Fidelity and Guaranty Company; John Pennebaker; Great River Insurance Company; William (Bill) Benson; and State Farm Fire and Casualty Company.

TABLE OF CONTENTS

QUESTION PRESENTED ..... i.

OTHER PARTIES TO PROCEEDING ..... ii.

TABLE OF CONTENTS ..... iii.

TABLE OF AUTHORITIES ..... iv.

PETITION FOR WRIT OF CERTIORARI .. 1.

OPINIONS BELOW ..... 1.

JURISDICTION ..... 1.

CONSTITUTIONAL PROVISIONS ..... 2.

STATEMENT OF THE CASE ..... 2.

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI ..... 4.

A. SUMMARY OF THE ARGUMENT ... 4.

B. ARGUMENT ..... 4.

CONCLUSION ..... 5.

TABLE OF AUTHORITIES

Cases

CONLEY v. GIBSON.
355 U.S. 41 ..... 5.

Constitutional Provision

USA Constitution Art. I §10 ..... 3.

USA Constitution Art. III §2 ..... 2.

USA Constitution Bill of Rights
Amendment I ..... 2.
Amendment XIV ..... 2,3.

Rules

SUPREME COURT OF THE UNITED STATES
Rule 10(a) ..... 2.

F.R.C.P. Rule 4 ..... 3,4.

F.R.C.P. Rules 26 - 37 ..... 2.

Statutes

42 USC § 1983 ..... 2.

USC §1251(b)(2) ..... 2,4.

PETITION FOR WRIT OF CERTIORARI

Petitioners Harry W. Vinson prays that a writ of certiorari issue to review the decision of the Federal District Court and The Fifth Circuit Court of Appeals wherein the courts decided an important federal question, ***right to appeal,*** in a way that conflicts with the Federal Rules of Civil Procedure.

OPINIONS BELOW

IN RE: *Harry Vinson vs Reggie Collums, et al,* United States District Court For The Northern District of Mississippi Eastern Division, No. 99 CV305-B-D Order denying petition to rehear May 8, 2000 [App. 1 - 2]

IN RE: *Harry Vinson; vs Reggie Collums,* et al, The United States Court of Appeals, No. 00-60358, order affirming district court decision July 27, 2000. [App. 3 - 4]

IN RE: *Harry Vinson; vs. Reggie Collums, et al,* Fifth Circuit Court of Appeals, denying petition for rehear, No. 00-60358, September 1, 2000. [App. 5]

JURISDICTION

The Fifth Circuit Court of Appeals entered an order July 27, 2000 and Petitioner's petition for rehearing was denied September 1, 2000. The Petition for Writ of Certiorari was timely filed 17

November, 2000. The jurisdiction of this court is invoked under USC § 1251(b)(2); U.S.A. Constitution Article III Section 2; Supreme Court of The United States Rule 10(a).

———♦———

CONSTITUTIONAL PROVISIONS

USA Constitution Bill of Rights
AMENDMENT XIV ...
"due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

———♦———

STATEMENT OF THE CASE

Petitioner filed a 42 U.S.C. §1983 claim against the Respondents for violations of his United State Constitutional Bill of Rights Article 1, Religious Rights; XIV Amendment, due process and equal protection of the law; and Article I Section 10 , laws impairing obligation of contract. Petitioner was denied opportunity for discovery to prove the complaint in the U S District Court For The Northern District of Mississippi, F.R.C.P. Rules 26 - 37 and Conley v Gibson, 355 U.S. 41. A series of respondent's motions for protective orders, dismissal and stay of discovery were filed and objected to by Petitioner, admissions and productions were filed and depositions noticed by Petitioner most of which were never ruled upon or

adjudicated by the Federal District Court. Without the opportunity to prove or disprove the alleged immunity defenses of the Respondent Clerks, the Federal District Judge arbitrarily dismissed the case against the Respondent Clerks. The Respondent Insurance Carriers moved the court for extensions of time to respond which was granted. Respondent Insurance Carriers then moved the court to join Respondent Clerk's motion to dismiss which had already been granted and reconsideration asked for.

A series of motions to amend the orders filed by all Respondents ensued along with other motions for relief. A final amended order was entered May 8, 2000 with memorandum by the Federal District Court Clerk on May 11, 2000.

In all the amendments and changes by the Federal District Court, Petitioner filed a Notice of Appeal from an order dated April 6, 2000. This final order was later amended and filed May 8, 2000, therefore the Notice of Appeal dated May 9, 2000 was timely filed and perfected within the 30 day time pursuant to F.R.C.P. Rule 4, in fact was filed within one day.

On appeal to the Fifth Circuit Court of Appeals, the Appellate Court held that the appeal was not timely filed relying upon the order dated April 6, 2000 even though it was amended and filed May 8, 2000, therefore the Court of Appeals in ignoring F.R.C.P. Rule 4, 28 USC §2072 and Petitioner's constitutional due process and equal protection of the laws, XIV Amendment. Petition for rehear was denied.

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

A. SUMMARY OF THE ARGUMENT:

Petitioner has the right of appeal which is most easily understood when following F.R.C.P. Rule 4. This substantive right is further guaranteed by Congress 28 U.S.C. §2072 and the due process clause of the United States Constitution.

B. ARGUMENT:

Substantive rights have been guaranteed to the citizens of the United States by the Constitution of the United States, acts of congress and the Federal Rules of Civil Procedure. When a court of appeals totally ignores these rights, it no longer acts as appellate review but then acts on its own accord, further eroding due process and equal protection of the laws.

CONCLUSION

The Supreme Court of The United States has an affirmative duty to secure the citizen's rights. A crucial and persuasive method in securing these rights is through the Supreme Court's supervisory powers. Therefore this court should grant a the petition for writ of certiorari to correct the appellate court for the benefit of all citizens.

Respectfully submitted,
Harry W. Vinson
P. O. Box 791
New Albany, MS 38652
(662) 534-2424

November 2000
August 2000

IN THE UNITED STATES FEDERAL DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI

No. 1:99CV305-B-D

HARRY W. VINSON PLAINTIFF

vs.

REGGIE COLLUMS, ET AL DEFENDANTS

ORDER

This cause comes before the court upon motion of the plaintiff entitled "Petition to Reconsider and Set the Order Aside." The Plaintiff requests that the court reconsider and set aside its order dated April 12, 2000. The court having reviewed the plaintiff's "petition" finds that it is in effect a motion to reconsider pursuant to Rule 59(e), which allows for altering or amending of judgments. Upon due consideration of the plaintiff's "petition" the court finds that the plaintiff has failed to bring forth any evidence of: 1) an intervening change in controlling law, 2) the availability of new evidence not previously available, or 3) the need to correct a clear error of law or prevent manifest injustice, as required for reconsideration[1], but is merely rearguing prior positions, which have repeatedly been placed before the court; and thus, the court finds that reconsideration is not proper.

Accordingly, it is so ORDERED that the plaintiff's petition to reconsider and set the order aside is DENIED.

THIS, the 5th day May (D.H.), 2000.

/s/ Neal Biggers, Jr.
Chief Judge

File date: 8 May 2000

[1] **Atkins v Marathon LeTourneau Co., 130 F.R.D. 625 (S.D. Miss. 1990)**

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 00-60358

HARRY W. VINSON APPELLANT

vs.

REGGIE COLLUMS, ET AL APPELLEES

Appeal from the United States District Court for the Northern District of Mississippi

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Before WIENER, EMILIO M. GARZA, and PARKER, Circuit Judges.

BY THE COURT:

IT IS ORDERED the motion of appellee State Farm Fire and Casualty Company to dismiss State Farm as a party to appeal is granted.

IT IS FURTHER ORDERED that the joinder motion of appellee Great River Insurance Company to dismiss Great River as a party to appeal is granted.

IT IS FURTHER ORDERED that the motion of appellees Reggie Collums, John Pennebaker, and William (Bill) Benson to dismiss appeal for lack of jurisdiction is granted.

IT IS FURTHER ORDERED that the joinder motion of appellee United States Fidelity and Guaranty Company to dismiss appeal for lack of jurisdiction is granted.

Clerk, U.S. Court of Appeals, Fifth Circuit
by Latonga Grant
Deputy
New Orleans, Louisiana

File date: July 27, 2000

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 00-60358

HARRY W. VINSON APPELLANT

vs.

REGGIE COLLUMS, ET AL APPELLEES

Appeal from the United States District Court for the Northern District of Mississippi

---

Before WIENER, EMILIO M. GARZA, and PARKER, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellant's motion for reconsideration of the Court's order of July 27, 2000 is denied.

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File Date: September 1, 2000

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In The

SUPREME COURT OF THE UNITED STATES

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HARRY W. VINSON
Petitioner

v.

REGGIE COLLUMS, ET AL

Respondents

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On Petition For Writ Of Certiorari To The
United States Court of Appeals For
The Fifth Circuit

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SUPPLEMENT APPENDIX

_____♦_____

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INDEX TO SUPPLEMENT APPENDIX

page

Memorandum Opinion 10 April 2000 ..... 1.

Order 10 April 2000 ..... 7.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
MISSISSIPPI, WESTERN DIVISION

HARRY VINSON PLAINTIFF

Vs. CIVIL ACTION NO. 1:99CV305-B-D

REGGIE COLLUMS; his insurance carrier, UNITED STATES FIDELITY AND GUARANTY COMPANY; JOHN PENNEBAKER; his insurance carrier, GREAT RIVER INSURANCE CO.; WILLIAM H. (BILL) BENSON; his insurance carrier, STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANTS

MEMORANDUM OPINION

This cause is before the court on the issue of Rule 11 sanctions issued against the plaintiff in the above styled and numbered cause. Said sanctions, in the amount of attorney's fees and cost associated with the filing of the defendants' motion to dismiss, were granted upon proper motion of the defendants, Benson, Collums, and Pennebaker. The defendants' attorneys have properly submitted an itemization of fees and expenses and supporting affidavits and the plaintiff has objected to the same. Upon due consideration of the itemization, affidavits, memoranda, and the record in this cause, the court is ready to rule.

LAW

Under Rule 11 of the Federal Rules of Civil Procedure, the court may impose appropriate

sanctions, including attorney's fees, against any party who filed a frivolous action, files an action for an improper purpose such as harassment, or filed an action which is not reasonably supported by law. See Fed.R.Civ.P. 11. Sanctions awarded under Rule 11 are essentially deterrent in nature. Spiller v Ella Smithers Geriatric Ctr. 919 F.2d 339, 345 (5th Cir. 1990). Such sanctions are imposed to discourage dilatory tactics and the maintenance of untenable position. Id. In this matter, the court finds that the imposition of sanctions was appropriate due to the plaintiff's continued vexatious conduct.

The court is mindful of the fact that the plaintiff has proceeded *pro se* in this action. Yet, a *pro se* litigant also has responsibility under Rule 11. The court has twice before warned the plaintiff that filing baseless motions or actions, even as a *pro se* litigant, may invited sanctions. The plaintiff has filed numerous actions in this court. The majority of the plaintiff's causes are substantially similar to the instant cause. Of the cases filed by Mr. Vinson, all but two have been brought under 42 U.S.C. §1983 and additional constitutional claims. In each of these cases, like the instant case, Mr. Vinson has made allegations against state or municipal employees and/or officials, because he is aggrieved by some state actions adverse to his interests. All of Mr. Vinson's complaints contain broad, vague allegations with no substantive facts and show an inadequate understanding of the Federal Rules of Civil Procedure or the United States Code.

After being twice warned of the possibility of sanctions, the court did previously sanction the plaintiff by requiring that the plaintiff not file any

new actions without prior permission of the court. See Vinson v Colom et al (1:99cv098-B-D) and Vinson v Colom, (1:99cv062-B-D). Yet the plaintiff's actions continue to needlessly harass public officials and cause undue expense. The court, conscious of its duty to impose the least severe sanctions necessary to achieve the objectives of Rule 11, finds that the instant action was patently frivolous and the sanctions awarded in this case are proper. See Thomas v Capital Sec.Servs., Inc., 836 F.2d 866 (5th Cir. 1988).

"What constitutes "reasonable expenses" and a "reasonable attorney's fee" within the context of Rule 11 must be considered in tandem with the rule's goals of deterrence, punishment, and compensation." Thomas 836 F.2d at 879; citing INVST Financial Group v Chem-Nuclear Systems, 815 F.2d 391, 404 (6th Cir.), cert. denied, 484 U.S. 927, 108 S. Ct. 291, 98 L.Ed. 2d 251 (1987). In order to make a finding of "reasonableness" the court must necessarily inquire as to the extend to which the non-violating party's expenses and fees could have been avoided or were self-imposed. Id. In the instant cause, the defendants' actions were prompt and their fees and expenses were all incurred in an effort to defend the complaint filed against them by Mr. Vinson and not to incur additional expense of cause delay.

A. ATTORNEY'S FEES

In determining the appropriate amount of attorney's fees to award, the court applies the "lodestar" method of computation. The "lodestar" is computed multiplying the numbers of hours reasonably expended by the prevailing hourly rate in the community of similar work. The court then adjusts the lodestar upward or downward on the

respective weights of the twelve factors set forth in Johnson v Georgia Highway Express, Inc. 488 F.2d 714, 717-19 (5th Cir. 1974); Longden v Sunderman, 979 F.2d 1095, 1099 (5th Cir. 1992). The twelve Johnson factors are as follows:

(1) the time and labor required;

(2) the novelty and difficulty of the questions involved;

(3) the skill required to perform the legal service properly;

(4) the preclusion of other employment by the attorney due to the acceptance of the case;

(5) the customary fee;

(6) whether the fee is fixed or contingent;

(7) the time limitations imposed by the client or the circumstances;

(8) the amount involved and the results obtained;

(9) the experience, reputation, and ability of the attorneys;

(10) the "undesirability" of the case;

(11) the nature and the length of the professional relationship with the client;

(12) awards in similar cases.

Johnson, 488 F.2d at 717-719. Even though the Johnson factors must be addressed to ensure that the resulting fee is reasonable, not every factor need be necessarily considered. Louisiana Power & Light Co. v. Kellstrom, 50 F.3d 319, 331 (5th Cir. 1995); Uselton v Commercial Lovelace Motor Freight, Inc., 9 F.3d 849, 854 (10th Cir. 1993) ("rarely are all the Johnson factors applicable ...") (quoting Brown v Phillips Petrol.Co, 838 F.2d 451, 456 (10th Cir. 1988).

The defendants, Collums, Pennebaker and Benson, were all three represented by Mr. James

A. Barnett, Esq., and Mr. Bradley L. Dillard, Esq., of the Mitchell, McNutt, Threadgill, Smith and Sams law firm. The defendants filed their motion to dismiss and memoranda collectively. Therefore, the defendants collectively seek $492.50 in fees based on one hour by Mr. Dillard for fees associated with filing their motion. The defendants have submitted an itemization of fees and expenses as well as supporting affidavits from each of their attorneys. The affidavits specifically address each of the Johnson factors, listed above, as applicable to the instant cause.

The plaintiff does not mention any of the factors, as listed above in his response and objection. Instead, the plaintiff objects to the defendants' claimed amount of fees and expenses stating that the amount is improper, that the defendants' attorneys' affidavits are fraudulent, and that the itemization of fees and expenses should be dismissed or a more definite statement required. However, the plaintiff provides no substantive basis for his objections or accusations of fraud other than relying on the procedures of Rule 11 itself. The plaintiff's objections sound with the same anger and antagonistic tones of his ill-founded complaint against the defendants and are not well taken.

The court finds that the hourly rates of the defendants' attorneys are reasonable and customary. Said rates, as multiplied by the hours claimed in the defendants' itemization of fees, results in a lodestar amount of $492.50. These fees are a reasonable and appropriate sanction under Rule 11 as they are sufficient to deter similar future actions by the plaintiff and are the least severe that will adequately further the

purpose of the rule.

B. EXPENSES

The defendants further seek $111.34 in expenses based on $1.54 in long distance charges and $109.80 for copying costs. The plaintiff specifically objects to the amount of copying costs. The court notes that there are six defendants in this cause. The attorneys for the three defendants, Collums, Pennebaker and Benson, necessarily would need a sufficient number of copies of their motion to dismiss and any responses or other related pleadings to their clients, the plaintiff, the court, and the remaining three defendants; thus requiring eight sets of copies per motion, response, etc. The court has reviewed the claimed expenses and finds that they are reasonable. As such, the full amount of the claimed expenses, totaling $603.84, shall be awarded.

CONCLUSION

For the forgoing reasons, the court will award, as a sanction against the plaintiff under Rule 11 of the Federal Rules of Civil Procedure the defendants attorney's fees and expenses in preparation of their motion to dismiss in the amount of $603.84.

An order will issue accordingly.

THIS, the 10th day of April, 2000.

/s/

Neal B. Biggers, Jr.
Chief Judge

File date: 12 April 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
MISSISSIPPI, WESTERN DIVISION

HARRY VINSON PLAINTIFF

Vs. CIVIL ACTION NO. 1:99CV305-B-D

REGGIE COLLUMS; his insurance carrier, UNITED STATES FIDELITY AND GUARANTY COMPANY; JOHN PENNEBAKER; his insurance carrier, GREAT RIVER INSURANCE CO.; WILLIAM H. (BILL) BENSON; his insurance carrier, STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANTS

ORDER

In accordance with the memorandum opinion this day issued, it is ORDERED:

that the defendants are awarded attorney's fees in the amount of $492.50 and expenses in the amount of $111.34, for a total amount of $603.84.

THIS the 10 day of April 2000.

/s/
Neal B. Biggers, Jr.
Chief Judge

No file date on order, assumed same as opinion